

Journal of Comparative Urban Law and Policy

Volume 2
Issue 1 *Study Space X Marseille, France*

Article 4

2017

The Emergence of Metropolitan Areas as a New Form of Interfederative Governance: A Comparative Study of Aix-Marseille-Provence and the Metropolitan Region of Rio de Janeiro

Aricia Fernandes Correia

Universidade Do Estado Do Rio De Janeiro, aricianandes@oi.com.br

Romulo S.R. Sampaio

FGV Law Rio, romulo.sampaio@fgv.br

Follow this and additional works at: <https://readingroom.law.gsu.edu/jculp>



Part of the [Comparative and Foreign Law Commons](#), [Environmental Law Commons](#), [Land Use Law Commons](#), and the [Urban Studies Commons](#)

Recommended Citation

Correia, Aricia Fernandes and Sampaio, Romulo S.R. (2017) "The Emergence of Metropolitan Areas as a New Form of Interfederative Governance: A Comparative Study of Aix-Marseille-Provence and the Metropolitan Region of Rio de Janeiro," *Journal of Comparative Urban Law and Policy*: Vol. 2 : Iss. 1 , Article 4, 44-64.

Available at: <https://readingroom.law.gsu.edu/jculp/vol2/iss1/4>

This Article is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Journal of Comparative Urban Law and Policy by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

THE EMERGENCE OF METROPOLITAN AREAS AS A NEW FORM OF INTERFEDERATIVE GOVERNANCE: A COMPARATIVE STUDY OF AIX-MARSEILLE-PROVENCE AND THE METROPOLITAN REGION OF RIO DE JANEIRO

Arícia Fernandes Correia*

Rômulo S. R. Sampaio**

ABSTRACT

The exponential demographic increase of the last century and the transformation of the cities, from industrial to service providers, added to the phenomenon of conurbation. In addition, the new social, environmental, economic, political and cultural dynamics of close cities, challenged the traditional municipal power and required a collaborative new management framework. Global cities became metropolitan areas. Issues of local urban interest are now of regional preoccupation. Governmental institutional frameworks and urban planning were not designed to match this new socioeconomic and environmental metropolitan order. This paper deals with the legal challenges of creating metropolitan governance structures comparing France and Brazil. This is a useful comparison in the sense that the demand for metropolitan governance structure is shared by different countries despite the differences in the way their systems of government are structured. France is a unitary State, and Brazil is structured into a federal system. This manuscript aims at demonstrating that not only communes, in the case of France, but also municipalities, in the case of Brazil, need regional solidarity strategies and federative cohesion to overcome common problems in large metropolitan areas such as transportation, sewage collection and treatment facilities, housing, sustainable drainage policies and even public safety policies. As case studies for the comparison proposed in this paper, we examine the metropolitan areas of Aix-Marseille-Provence, in France, with that of Rio de Janeiro, in Brazil.

KEY WORDS: Urban Planning, Metropolitan areas, Conurbation, Regional Urban Development

1. INTRODUCTION

In 2050, 89% of the Latin America population will be living in cities.¹ The shift from a rural to an urban society is also expected in Europe. Mainstream

* Professor Correia is an attorney with the Rio de Janeiro General Attorney's Office. She holds Post-Doctorate degree from University of Paris, Panthéon Sorbonne and a Doctorate and Master degrees in Public Law by the State University of Rio de Janeiro (UERJ). She is currently a professor of law at UERJ.

** Professor Sampaio is a founding Partner of Rennó, Penteadó, Reis & Sampaio LL.P with offices in São Paulo and Rio de Janeiro, Brazil. He holds Doctorate (S.J.D.) and Master (LL.M.) degrees in Environmental Law from Elisabeth Haub School of Law at Pace University in New

urban issues, like transportation, sewage treatment and waste management will no longer be subject only to local authorities. Rather, they will have to adapt to the phenomenon of conurbation, defined as an urban area containing a large number of dwellers and “...formed by various towns growing and joining together.”² For large urban areas all over the world, conurbation is already happening. Furthermore, functional metropolis can also derive from a group of several cities with the same dynamics – social, cultural, economical –, despite being already geographically “conurbated.” Dealing with the new governance structural demand arising thereof constitutes the big urban planning and management challenge facing law and policymakers around the globe towards the implementation of all urban dwellers’ right to the city.³

The rapid rate of urban growth around the world is leading to conurbation and the appearance of what we can call “functional metropolis.” Those global cities, which, for Saskia Sassen,⁴ developed in the era of economic and political globalization, are becoming the heart of metropolitan areas. When cities get so close together due to a natural sprawling caused by urban growth or by economical, political and social conditions that turn them into functional metropolis, many of the issues subject to local authorities become of a metropolitan concern. A transportation policy choice of one municipality within a metropolitan area might have a negative impact on the neighboring city. The housing policy of a local power may be not enough to consider the ones that live far away from the city, in the suburb areas. And that is the case for other sensitive and equally important areas such as waste management, sewage collection and treatment facilities, sustainable drainage policies and even public safety policies including the hosting of jail buildings. In light of all those intertwined urban issues, a demand for a new form of governance arises naturally, regardless of how the government is structured in any given country. The case studies examined herein are examples of two distinct forms of government (Brazil, a federal republic, and France, characterized by a centralized federal authority) experiencing the conurbation and functional

York and a Master of Laws in Economic and Social Law and LL.B. from Pontific Catholic University of Paraná Law School (PUC-PR). He is currently a professor of law at Getulio Vargas Foundation (FGV) School of Law in Rio de Janeiro. He is also a visiting professor at Georgia State University School of Law in Atlanta and an adjunct professor at Elisabeth School of Law at Pace University in New York.

¹ UN-HABITAT. **Estado de las Ciudades de America Latina y el Caribe 2012.**

<http://www.onuhabitat.org> Acesso em 7.11.2013.

² Cambridge Dictionary, available at <https://dictionary.cambridge.org/us/dictionary/english-portuguese/conurbation>, last visited 23 January 2018.

³ The acclaimed expression is from Henry Lefebvre, in his classic: LEFEBVRE, Henry. *The right of the city*. On the other hand, the one who was more concerned about inequality in city is David Harvey in his oeuvres in general and, for this topic, more specifically in his book “Social Justice and the City”.

⁴ SASSEN, Saskia. **The Global City**. New York, London, Tokyo: Princeton University Press, 1991.

metropolisation phenomenon and the new governance framework demand arising thereof.

Based on the experience drawn from a week-long immersion into the Aix-Marseille Provence metropolitan area, filled with lectures from renowned scholars and practitioners and instructive fieldtrips, all as part of the 2017 Study Space program of Georgia State University⁵, we gathered enough information to propose some preliminary grounds for a comparative analysis presented in this manuscript. Our objective is twofold: first, to shed light on the challenges of metropolitan governance arising from two different countries facing the conurbation phenomenon and the metropolitan issues; second, to evaluate possible legal and institutional tools to address those challenges. This paper takes the knowledge acquired during that week-long program in the Aix-Marseille Provence metropolitan area and compares it with the Rio de Janeiro metropolitan area.

The study of both metropolitan areas allowed us to identify governance challenges in promoting regional cooperation among local powers and interfederative regional power governance structures alien to those traditional systems of government. Possible legal and institutional solutions include: a legal system with mandatory collaborative provision imposed upon municipalities, a political and outreach strategy aimed at creating a voluntary spirit of collaboration among local powers, and an administrative structure of governance allowing for ample public participation. Some of those solutions have already been put into practice by both metropolitan regions examined in this manuscript.

In order to identify the challenges and explore legal and institutional solutions to the metropolitan areas of Aix-Marseille Provence and Rio de Janeiro we begin with a brief overview of how the French and Brazilian governments are structured. Understanding the different forms of government will be illustrative to demonstrate that the governance challenges are common in metropolitan areas, irrespectively of the nation state organization power structure they are subsumed to. The second topic of our manuscript examines both countries' constitutional provisions regarding urban law. The share of power a municipality holds within each constitutional system is instrumental in identifying metropolitan governance challenges and, consequently, the legal and institutional tools to overcome them. We then turn to the analysis of both countries' federal laws regarding metropolitan areas. Both systems opted for federal laws laying the grounds for a regional and cooperative form of governance without undermining the foundations upon which both governments are structured. The creation of legally existent metropolitan areas in Brazil and France are dependent upon regional or local initiatives, a sort of bottom-up

⁵ *Study Space X Marseille* took place in the french city from 19 to 23 June of 2017, organized by Georgia State University College of Law's Center for the Comparative Study of Metropolitan Growth and coordinated by Professor Julian Juergensmeyer and Karen Johnston.

democratic approach. In Brazil, the federal law – the Metropolitan Statute from 2015 – deals only with metropolis. In France, metropolis is part of a General Code, created by two specific metropolitan rules: the MAPAM law, known as “modernization of the public action and affirmation of the metropolises”, promulgated in 2014, and the NOTRe law (new territorial organization of the Republic) published in 2015. Whether those laws constitute a sufficient legal instrument to promote a new regional metropolitan form of governance is the subject of the analysis conducted in this manuscript. Finally, before we render our concluding remarks, we intend to draw examples from the challenges, as well as from the legal and institutional tools we were able to identify in the Aix-Marseille Provence metropolitan area and compare them to those of the Metropolitan Region of Rio de Janeiro.

2. FORMS OF STATE IN BRAZIL AND IN FRANCE

The political and administrative structures of France and Brazil are different.⁶ France is organized into a unitary, centralized state. Brazil is a peculiar federation with three autonomous entities sharing legislative and administrative powers: the federal government, states and municipalities.⁷ The federal district where the capital, Brasília, is located, is also an autonomous and independent entity of the federation.

In practice, this apparent significant difference is relativized ever since a decentralized administrative movement began in France with the reform of the 1958 Constitution in 2003. Conversely in Brazil, the federation concentrates much of the administrative power in the federal government, despite the constitutional provisions of shared powers. Furthermore, the largest share of Brazilian taxes is collected and held by the federal government, which generates a fiscal imbalance impairing states and municipalities, mainly, in their abilities to exercise their share of the constitutional administrative power in areas such as urban law.. This fiscal imbalance makes states and municipalities heavily

⁶ The comparison between both systems of government is presented in greater detail by CORREIA, Arícia Fernandes. FARIAS, Talden. e AIETA, Vânia. **Planejamento urbano e energias renováveis: diálogos franco-brasileiros**. Belo Horizonte: Editar, 2016 – tradução livre.

⁷ Although not provoking a quarrel like the historical one between federalists (HAMILTON, Alexander. MADISON, James. JAY, John. **The Federalist Papers: A Collection of Essays Written in Favor of the New Constitution**) and non-federalists, the inclusion of the Municipalities as a federative entity in the Brazilian constitution was a victory from the municipalism movement, guaranteeing political, administrative and, in these, financial autonomy to the local powers: the municipalities. It proved earlier than its promulgation: MEIRELLES, Hely Lopes. 3ª ed. ref. e atual. **Direito Municipal Brasileiro**. São Paulo: Revista dos Tribunais, 1977.

dependent upon federal programs and from the transfer of resources from the federal government.

On administrative urban management issues, however, municipalities in Brazil and communes in France, enjoy a great deal of autonomy in the planning and design of municipal policies. Such local autonomy is often a challenge for collaborative regional power management structures. Municipalities are reluctant to cede part of their autonomous power granted by their respective systems of government to an alien structure of governance involving diverse cities, often of different economic stature, social problems and, more importantly, governed by rival political parties.

The differences in how the governments of Brazil and France are structured, the degree of local power, and the challenges arising thereof can be better contextualized in light of both countries' constitutional frameworks. The following two sections examine the Brazilian and the French constitutions regarding their systems of government. The focus is on highlighting the degree of local power and the challenges for a new form of collaborative regional power structure to deal with the issues of common metropolitan interest.

2.1. Brazilian Constitutional Framework

Brazil is organized into a peculiar form of federation, with three degrees of powers: federal, represented by the Union; regional, by the State-Members; and local, through municipalities. The 1988 Federal Constitution ("BC/88") enumerates issues of exclusive federal legislative authority and issues of shared ones. The BC/88 conferred municipalities with an autonomous and independent status within the federation, equivalent to federal and state governments, and empowered them to enact laws and manage issues of local interest, mainly with respect to urban planning.

The large list of enumerated shared powers to state and municipal governments, including in the areas of environmental and urban policy, indicates a great degree of autonomy. However, due to an intense federal legislative appetite over all those issues of shared power, in practice, state and municipal legislative powers end up being limited in scope. This is due to a supremacy clause providing that federal law preempts state and municipal laws over issues of shared legislative power. Therefore, state and municipal laws often mirror those enacted by the federal congress or are laws detailing further issues legislated already by the federal government. However, municipal legislative power over issues of local interest such as those relating to land use planning and the social function of the city provide municipalities with a great degree of rulemaking autonomy.

Federal law dealing with cities is limited to setting forth general provisions and tools municipalities can choose to include in their legislation, zoning and planning regulation. The BC/88 dedicated a whole chapter (articles

182 and 183) to deal with aspirational provisions such as the social function of the city and urban property. Congress then enacted two relevant urban statutes to further detail the constitutional aspirational provisions: the Statute of the City (Law 10,257/2001) and the Statute of Metropolitan Areas (Law 13,089/2015). Even though the federal government has occupied the field, preemption randomly occurs in urban law because those federal constitutional and legislative provisions work more as a charter of fundamental urban principles and as a menu of different legal urban management tools for local lawmakers. Though significant room for local legislative power remains.⁸ A great deal of political will remain within municipal authorities to preserve legislative and management powers over issues of local interest.

The limiting factor of municipal power in Brazil is the uneven distribution of wealth and of tax revenues. Most of the 5,570 municipalities in Brazil are not independently economically viable, but instead rely upon the distribution of federal and state tax revenues. In large municipalities with large tax incomes, the municipal budget is often not sufficient to address the challenges of related to deep social inequalities in large metropolitan areas. Therefore, in practice, a high degree of dependence on federal and state funds limits municipalities' management powers arising from their legislative constitutional authority. In this sense, grouping municipalities into a collaborative metropolitan governance structure has the potential to strengthen municipal leverage towards a larger financial independence that, in turn, will enhance their legislative and self-management autonomy.

2.2. FRENCH CONSTITUTIONAL FRAMEWORK

Contrary to Brazil, a country organized into a federation, France is a unitary state, an inheritance from absolutist times. More recently though, with the 2003 reform of the 1958 Constitution, a new interpretation emerged. A principle of administrative decentralization arose and resulted in an increase of administrative and financial powers to the land collectivities that compose the State. The unitary system of the French state had to accommodate a constitutional principle reflecting a social demand for a decentralized management structure.

France's political administrative structure is composed of three levels of elected local governmental authorities according to the General Code of Land

⁸ Some important urban legal instruments are mandatory, like a master plan for any city with more than twenty thousand inhabitants. Others, however, such as participatory budgeting, fall within the discretionary power of local authorities.

Collectivities: ⁹ ¹⁰ regions, departments and communes. None of those more than 35,000 entities within the country, however, have rulemaking power, at least not to prevail over federal regulation. Chrétien and Chiffot explain that « au sein des institutions françaises, la décentralisation correspond à l'attribution d'une certaine autonomie à des collectivités qui s'administrent librement par des conseils élus, sous le contrôle du gouvernement. »¹¹

A commune is the equivalent of a municipality, representing the closest local authority to the people of all those decentralized authorities. The country has a long history of cooperation among communes with shared interests.¹² Through an intercommunality structure that dates to the 19th Century, a communality (group of communes) can collaborate in areas such as public transportation, water supply and others alike. One kind of interfederative collectivity is the metropolis, constituting the most integrated form of intercommunality structure in France and providing for a regional authority to deal with the common interests of a metropolitan area.

In urban law, for instance, the French Constitution set forth the fundamental principle of local power over local territorial planning and management. However, contrary to the Brazilian Constitution, the French Magna Carta does not deal with urban law expressly. Constitutional urban provisions in the French system are implicit, as ruled by the French State Council, being part of the constitutional environmental protection provisions¹³ and other principles such as legitimate restrictions to the private property right. When combined with the land collectivities self-management power, those constitutional provisions provide for the legal framework on urban law. In that sense, the notion of regional governance through the establishment of a metropolis serves to strengthen communes by promoting economy of scale and enhancing political power whenever feasible.

Against both countries' constitutional background on urban law, the following chapter examines the details of how local authority is exercised through the legal framework in place. Brazil and France have enacted metropolitan statutory provisions to accommodate an alien form of regional

⁹ Access to the General Code of Land Collectivities: < <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633> >

¹⁰ The most important bibliographic reference about land collectivities in France is: AUBY, Jean-Bernard *et alli*. **Droit des collectivités locales**. 5a. ed. Paris: Presses Universitaires de France, 1990.

¹¹ Into French institutions, the decentralization means a kind of autonomy to collectivities so that they can administrate themselves with freedom by elected organisms, under the governmental control. (CHRÉTIEN, Patrice. et CHIFFLOT, Nicolas. **Droit administratif**. 13a ed. Paris : Dalloz, 2012 – free translation).

¹² CORREIA, Arícia Fernandes. FARIAS, Talden. e AIETA, Vânia. **Planejamento urbano e energias renováveis**: diálogos franco-brasileiros. Belo Horizonte: Editar, 2016 – tradução livre.

¹³ The protection of Environmental Law happend by the promulgation of the “Bill of the Environment”, from 2004, included in the french block of constitutionality.

collaborative structure in their respective systems of government. The promises of such an institutional arrangement are matched by the challenges of bringing local authorities to the table and convincing them to cede part of their municipal power on behalf of the regional common good.

3. FRENCH AND BRAZILIAN LAWS ON METROPOLITAN AREAS

A legal framework to deal with metropolitan areas arose from a demand for coordinated local policies due to the massive conurbation phenomenon experienced by major cities around the world and by common economic, political and social dynamics of metropolitan areas around those large municipalities. Irrespectively of the political-administrative structure of any given country, whether a unitary centralized state – like France, or a federalist state such as Brazil –, the urban sprawl of recent decades created a need for coordinated policies to provide city dwellers with access to services like water supply and sewage, transportation, affordable housing, waste management and others. That, in turn, imposed upon lawmakers the task of providing metropolitan areas with a formal management structure with self-organization and executive powers over those issues of common regional interest. Within this collaborative management power structure, allowing for effective public participation and balancing the distribution of deliberative power among participating municipalities became a crucial part to achieving the metropolitan goals of coordinating policies over issues of common regional interest. Both countries accommodated the metropolitan demands into their respective legal orders: in France, in the General Code of Land Collectivities; in Brazil, in the Metropolitan Area Act of 2015. The following sections examine in greater detail those metropolitan statutory frameworks.

3.1. THE FRENCH METROPOLIS AS AN INTERFEDERATIVE MANAGEMENT STRUCTURE

Throughout the 20th Century, France experienced a growing demand from decentralized authorities for a greater degree of administrative autonomy. The central government responded by augmenting local authorities' taxation and legal powers. In January 2015, a French decree legally instituted into metropolis all existing informal interfederative collaborative structures, empowering them with self-taxation autonomy. All management powers previously acquired by those more informal collaborative interfederative structures were transferred to the then recently instituted metropolises by the decree.

According to the General Code of Land Collectivities¹⁴, there are three forms of governmental authorities: regions, departments and communes. Considering France has over 35,000 communes, the governmental system had to accommodate intercommunal collaboration to deal with issues of regional common interest. Within this collaborative management structure emerged the notion of a metropolis upon which the legal framework was built. According to Article L-5217-1 in Chapter VII (Metropolis) of Book 2 (Cooperation Interfederative) of the Fifth Section (Local Cooperation) of the General Code of Land Collectivities,¹⁵ a “metropolis” is defined as:

“...[a] public institution of inter-municipal co-operation with self-taxation power which unites several communes into one structure and without enclave within a space of solidarity to elaborate and to lead together a project of economic, ecological, educational, cultural and social planning and development of their territory in order to improve their cohesion and competitiveness and to contribute to sustainable and inclusive development of the regional territory.”¹⁶

The creation and implementation of a metropolis is legally done by a decree. The creating decree sets forth the name of the metropolis, its perimeter, headquarters, enumerated powers as well as its starting operating date. A metropolis is not bound by a specific term. Whenever a metropolis is instituted, no time limitation applies.

Article L5217-2 of the General Code of Land Collectivities lists areas of metropolitan authority. Zoning, actions towards the economic development of the metropolis and management power over issues of metropolitan common interest fall within the metropolis’ authority. The urban planning of a metropolitan area is conducted “en lieu et place des communes membres” or, in substitution of its commune’s members.

The French metropolitan legal framework empowered the metropolis significantly. It also recognized an informal collaborative action practiced by communes before a formal legal framework was in place. This legal recognition

¹⁴ Access to the General Code of Land Collectivities:

< <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070633>>, in 23 February 2018.

¹⁵ The Law MAPAM is considered the one of the modernisation of public action and metropolitan affirmative act and was published in 27 January 2014. The Law n° 2015-991, from August 7, 2015 brought a new land organization of the French Republic.

¹⁶ *La métropole est un établissement public de coopération intercommunale à fiscalité propre regroupant plusieurs communes d'un seul tenant et sans enclave au sein d'un espace de solidarité pour élaborer et conduire ensemble un projet d'aménagement et de développement économique, écologique, éducatif, culturel et social de leur territoire afin d'en améliorer la cohésion et la compétitivité et de concourir à un développement durable et solidaire du territoire régional. (free translation in english in the text)*

of a metropolis responded to the aforementioned historical demand without changing the French system of government. The decentralized metropolis did not constitute another layer of power-structure entity within the French unitary state. Rather, it absorbed most of the local authorities' powers over issues of common regional interest. In practice, the legal recognition of a metropolitan authority represented a subrogation of local entities' authority in favor of regional common interests. In that sense, the French metropolitan structures end up being more robust than their Brazilian counterparts still limited by the broad constitutional legislative and executive powers enjoyed by municipalities.

3.2. THE BRAZILIAN METROPOLITAN LAW

The conception of metropolitan areas was allowed by the 1967 Brazilian Constitution under the Chapter of "Social and Economic Order." Under that former constitutional order, the federal government was empowered to create metropolitan areas by means of "complementary" law, one which requires qualified majority in Congress. The current 1988 Constitution maintained a similar provision, but empowered states – through their respective legislative powers – to enact, also through qualified majority, laws creating metropolitan areas. Article 25, paragraph 3, of the Brazilian Constitution allows for states to create by state complementary law subject to a qualified majority, metropolitan areas formed by neighboring cities. The identifiable need for integrated management, planning and execution of common interest policies shall give rise to the creation of a metropolitan area.

Another significant difference between the 1967 and the current 1988 Brazilian Constitution was that the metropolitan area provision was relocated in the former Carta Magna to the Chapter dealing with the Organization of the State. That, however, was not sufficient to confer upon metropolitan areas the political status enjoyed by the federal, state, municipal and the federal district governments. Metropolitan organizations were entitled to administrative powers enumerated by state law and subject to municipal political autonomy. In that way, metropolitan areas constitute a regional intergovernmental structure of administrative power over areas of common interest. The 1988 Constitution enabled states to institute and organize the administrative structure of a metropolitan area.

The rationale behind the conception of metropolitan administrative structures in Brazil lies in the recognition that some issues are not exclusively of local interest whenever conurbation occurs. Issues like environmental protection of local resources, water supply and sewage treatment, drainage, transportation and waste management in metropolitan areas can be of regional interest without, however, being of state interest to attract state legislative and management power. Instead, whenever conurbation and functional metropolis gives rise to shared interests, municipalities and the state will have joint responsibilities demanding thereof an interfederative governance structure. That

means a metropolitan management structure allowing for executive and rulemaking powers to the municipalities and the state, instituted and organized by the latter, but with enumerated powers exercised in conjunction with the former.

The Brazilian Constitution did not empower metropolitan areas as an independent and autonomous political entity within the federation. They rely, therefore, on the cooperation among the executive powers of the municipalities involved in the limits of the law of the state. Because those municipalities and the state are autonomous political entities of the federation, there lies the challenge of establishing an executive and legislative condominium over those issues of common interest. In part, also because a metropolitan region created by state law does not constitute an association of municipalities, but an organism that takes care of common interests. A metropolis, therefore, does not substitute local authority: the new and common interests must be taken into account without undermining a municipality's autonomy. The cities of a metropolitan area cannot withdraw from this administrative management structure. In light of their political autonomy, municipalities can vote as they please on those issues of metropolitan interests and withhold the remaining powers over issues of strictly local interest. But they will still be bound by the interventions arising from the decisions made by the metropolitan authority on behalf of the regional common interest. This special feature differentiates metropolitan governance structures in Brazil from those in France. In the latter, the metropolis authority claims the powers of the communes. In Brazil, the metropolitan authority exercises a combination of powers conferred upon it by the state and participating municipalities. Those powers must be duly justifiable in the instituting statute as those needed for the management of issues of regional common interest.¹⁷

In Brazil, a state must initiate the process of instituting a metropolitan authority whenever the need for more coordinated management in large urban areas composed of two or more cities is identified. In that sense, the Brazilian metropolitan authorities does not resemble those entities created by international agreements setting regional governance structures among nation-states. Those authorities are instituted based on a voluntary sovereign will of participating countries as opposed to the metropolitan regions in Brazil, which result from the will of the state legislative power. That does not mean, however, that states enjoy unlimited discretionary power to create metropolitan areas. They must identify the demand for an interfederative governance structure arising from the need of coordinated policies in issues of common interest. An arbitrary state law creating a metropolitan area, one that does not account for an

¹⁷ This is the rationale of the Brazilian Supreme Court ruling in the paradigm case Adin n. 1842/RJ – STF, *available at* <http://stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%28ADI%24%2ESCLA%2E+E+1842%2ENUM%2E%29+OU+%28ADI%2EACMS%2E+ADJ2+1842%2EACMS%2E%29&base=baseAcordaos&url=http://tinyurl.com/cbladmccg> (last visited on 10 March 2018).

integrated and coordinated management demand in light of issues of common interest, is likely to be unconstitutional.

The Brazilian Metropolitan Act, Law 13,089 enacted on 12 January 2015, regulates a longstanding constitutional provision recognizing this new form of intergovernmental (or interfederative) governance demand and creating the standards that authorize the creation, by the state law, of metropolitan areas, its common interests, the parameters of the governance system and deliberating structure. Being part of a metropolitan region does not limit municipal political-administrative and legislative autonomy under the Brazilian Constitution. That would also be unconstitutional. Rather, a metropolitan authority constitutes a legal response to the conurbation phenomenon and to the functional metropolitan standards, conditioning municipal authority to take into consideration the regional common interest in areas of such nature. That is exactly what the Metropolitan Law of 2015 addressed. The statute imposed the requirement that local planning and management be consistent with regional planning and management in areas of local interest identified by the metropolitan authority.

The 2015 Metropolitan Law set forth the definition of a metropolis, a metropolitan area, public service in areas of common interest and, most importantly, interfederative governance. By the latter, the law defines the sharing of responsibilities and actions among independent entities of the federation regarding the organization, planning and execution of public services in areas of common interest. The fundamental pillars for the interfederative governance are those listed by article 6 of the law: prevailing of common over local interests; shared responsibilities towards the promotion of integrated urban development; political autonomy of the entities of the federation; due attention for regional and local peculiarities; democratic management of the city; effective use of public resources; and sustainable development.

Worth noticing that the interfederative governance structure created by the 2015 Metropolitan Law aimed at highlighting the demand for a regional management organization to deal with issues of common interest without undermining the political autonomy of municipalities and states as set forth in the 1988 Brazilian Constitution. To accommodate the country's federalist system of government with this new interfederative governance structure, the 2015 Metropolitan Law granted participating municipalities into a metropolitan region the right to participate fully into the executive decision and rulemaking process, as well as the obligation to share the financial burdens arising thereof according to their respective shares as agreed upon in the articles of incorporation. To that extent, article 8 of the 2015 Metropolitan Law instituted an executive entity, a deliberative council and a technical and advisory body. The executive entity shall be composed of representatives of the participating entities of the federation (cities and state) to reflect and accommodate the municipal political autonomy under the federalist system.

One of the main features of the aforementioned 2015 Act is the requirement imposed upon the Metropolitan Region to have an integrated urban development plan, taking into consideration the local peculiarities of all involved cities. Furthermore, the 2015 Act imposes upon participating municipalities the need to review their respective master plans to make them compatible with the integrated urban development plan. This is a major provision as it weighs in favor of the regional common interest principle in comparison with the constitutional local autonomy premise. In that regard, the 2015 Act came to reflect the ruling in a 1998 paradigm Supreme Court case upholding that the Metropolitan Authority is an executive-administrative entity combining all metropolitan interests, according to rules of proceedings that can be freely agreed upon so long as one federalist entity's will does not prevail over the others. With respect specifically to the common interest principle, this landmark precedent upheld the municipal autonomy, but ruled that such important constitutional provision is not sufficient to allow a municipality to refuse or withdraw from the metropolitan authority once instituted by state law.

The interfederative governance concept formally instated by the 2015 Metropolitan Law was able to legally accommodate a different institutional framework demanded by the conurbation phenomenon and the new land demands of common interests. Without undermining the federalist premise of the Brazilian system of government, the interfederative governance concept allowed for municipalities to participate fully in the executive and administrative rulemaking process together with the state on matters of common interest of a metropolitan area without undermining their autonomy over those issues of local affairs strictly considered. In that sense, the 2015 Metropolitan Law clears the pathway for metropolitan authorities to implement coordinated and integrated common interest policies by providing the necessary legal predictability and stability to address the shared urban, environmental and socioeconomic demands arising from the conurbation phenomenon.

4. THE AIX-MARSEILLE-PROVENCE METROPOLIS AND THE METROPOLITAN REGION OF RIO DE JANEIRO

Against the brief historical and legal panorama presented hitherto, in following sections we examine the Aix-Marseille-Provence Metropolis and the Metropolitan Region of Rio de Janeiro in a comparative perspective. We aim to use both regions as case studies to support our analysis of France and Brazil, indicating the need for an interfederative form of governance structure to face the growing demand for integrated regional policymaking processes.

4.1. THE AIX-MARSEILLE-PROVENCE METROPOLIS

The metropolis of Aix-Marseille Provence, the largest one in France, concentrates 92 communes and 1.8 million inhabitants, 93% of the population of Bouches-du-Rhône and 37% of the population of the ensemble of the Provence-Alpes- Côte d'Azur. It is managed by a metropolitan council of 240 members appointed by the participating communes. It exercises authority over issues of economic development, land planning and the administration of some public services. In terms of territorial governance, the metropolis of Aix-Marseille-Provence is subdivided into six territories – relating back to the old interfederative entities - each one of them with its own council. There is also the Council of the Metropolis, with elected President and Vice-President. Aix-Marseille-Provence benefits from an adapted internal architecture and specific implementation methods. While the ten French metropolises, created on January 1, 2015, were the result of the transformation of an urban community or agglomeration community, without a change in scope, the Aix-Marseille-Provence Metropolis is born from the merger of 6 EPCI (establishment publique inter-communal) of its territory. Its date of creation was therefore postponed to January 1, 2016 and a transitional period between 2016 and 2020 was introduced to accommodate the administrative complexity of this merger.

Figure 1: Aix-Marseille Provence Metropolis



Source: <http://www.marseille-provence.fr>

The Aix-Marseille-Provence is legally supported by the General Code of Land Collectivities and, specially, two laws: (i) The MAPAM law, known as “modernization of the public action and affirmation of the metropolises,” promulgated on January 27, 2014, and (ii) the NOTRe law (new territorial organization of the republic) published on August 8, 2015 in the Official Journal. This law introduces important shifts to the provisions relating to the organization and functioning of the metropolis initially envisaged by the

MAPAM law. According to its official electronic page,¹⁸ the law defines certain powers as falling exclusively within the metropolis' authority: major master plans in economic development and organization of economic spaces and metropolitan operations, territorial coherence, transport and mobility, roads, housing, urban development, sanitation and rainwater, market of national interest, waste management, the environment, energy, climate, support programs and support for higher education institutions and research programs, concession of the public distribution of electricity and gas, urban heating or cooling networks and the development of the metropolitan project.

According to research conducted by the Brazilian Metropolitan Observatory,¹⁹ "the experience of the Marseille-Aix metropolitan area shows the limits and potentialities of negotiation among local actors in the relatively centralized French system." The negotiation challenges are presented by this research as one of the main institutional challenges to overcome. It should be noted that this is a territory with a low degree of social capital and with large intra-metropolitan disparities and that was strongly affected by the process of productive restructuring. Since the mid-1960s, the restructuring of the petrochemical, naval and mining industries has strongly affected the city of Marseille, which has gone into decay. At the same time, in the mildest of the process of decentralization, which began in the 1980s, French cities and regions gained a greater degree of autonomy in structuring their policies, but without mechanisms to ensure a proper degree of cooperation on the metropolitan scale. Greater collaboration was only perceived in the beginning of the 21st century, after an affirmative action²⁰ in direction of bigger powers to metropolitan structures, with the enactment of the NOTRe law (new territorial organization of the republic).

According to Mr. Vincent Fouchier, general director adjunct of Aix-Marseille-Provence Metropolis, who delivered the first lecture in the *Study Space 2017* in Marseille, the fundamental pillar to strengthening the institutionalization of the Aix-Marseille-Provence metropolis were: (i) cooperation and (ii) innovation. Cooperation to overcome the inequality of its communes and the local disputes and to solve common metropolitan issues, as transportation, housing and quarrels against suburbs and innovation, by new concepts, as smart cities, living labs, smart transportation and technology incubators. The work conducted in Aix-Marseille-Provence was to create institutional tools of partnership and a sense of collectiveness never experienced

¹⁸ Available at <http://www.marseille-provence.fr/index.php/la-metropole/la-metropole-aix-marseille-provence>, with access in 10 December 2017.

¹⁹ OBSERVATÓRIO DAS METRÓPOLES. **Novas governanças para as áreas metropolitanas o panorama internacional e as perspectivas para o caso brasileiro.** Disposal in: http://www.observatoriodasmetroles.ufrrj.br/relatorio_Klink.pdf, with access in 23 February 2018.

²⁰ The Law MAPAM is considered the one of the modernisation of public action and metropolitan affirmative act and was published in 27 January 2014.

before. There were four pillars over which the cooperative work had to stand: (i) democracy, once the metropolis are considered to be too far away from the citizens; (ii) innovation, by technology incubators to create the cities of the future; (iii) partnership, to share good practices and become known in the international scene and (iv) internationalization, to become a global metropolis.

The research developed by the Brazilian Metropolitan Observatory²¹ verified that, after working with the communes together, there was a gradual strengthening of the community (intermunicipal consortium), mainly due to two factors. First, there was a greater awareness among the mayors that the decision to delegate certain services of common interest should take place on a consensual basis, that is, from the individual analysis of each city/comune about the relationship cost/benefit rationality of regionalization.²² A growing number of cities have urban community due to the impossibility of paying, individually, the costs of operation and maintenance of services such as public transport and waste management. Increasing economy of scale is a great asset a regional development metropolis can offer. A second factor that strengthened the consortium movement was the selective financial incentives set up by the central government to stimulate urban communities.²³ This system played an important role in reducing disputes among participating cities.

The Aix-Marseille-Provence is demonstrating that the legal framework alone for this innovative structure of government is not sufficient to promote cooperation on behalf of the common regional good. The institutionalization of a metropolitan authority with concrete actions to demonstrate to local authorities and city dwellers the value of collaborative management structures is akin to achieving the regional urban development goals. Based on the experience drawn from the Aix-Marseille-Provence metropolitan case study, the following section will examine the case of the metropolitan region of Rio de Janeiro.

²¹ Available at: http://www.observatoriodasmetropoles.ufjf.br/relatorio_Klink.pdf, with access in 23 February 2018.

²² For a discussion about law and economics, it must be rid of the controversial thoughts of Posner: POSNER, Richard A. **Economic Analysis of Law**. Boston: Little Brown, 1973. Applying to the relation cost-benefit in decision of Public Administration, the pragmatism of Posner is used not by judges, but administrators.

²³ The opposite happened in Brazil, where the fund created by the Metropolitan Statute was rejected by the President, what tends to make failure the initiatives in large scale, that demands a strong budget. The veto over the creation of a national metropolitan fund came to be criticized as a decisive factor for the possible failure of the FPICs which, given the breadth of the territory covered, presupposes the need for substantial financial resources. According to Santos and Vasques, "by rejecting Section II of the Metropolitan Statute, where the National Integrated Urban Development Fund (FNDUI) was foreseen, the sources of funding for these services did not receive adequate treatment, unchanged the picture of strong heterogeneity among the Brazilian municipalities". (SANTOS, Ângela Moulin Penalva. e VASQUES, Pedro. *Estatuto da Metrópole: avanço normativo na gestão territorial a espera de cooperação financeira*. In: AIETA, Vânia. (Org.) **Direito da Cidade**. Tomo I. Coleção UERJ 80 Anos. Rio de Janeiro: Freitas Bastos, 2015)

4.2. THE METROPOLITAN REGION OF RIO DE JANEIRO (“RMRJ”)

The Metropolitan Region of Rio de Janeiro was legally instituted in 1975.²⁴ It is currently formed by municipalities located along and in the surroundings of the Guanabara Bay. The participating cities are: Belford Roxo, Duque de Caxias, Nilópolis, Guapimirim, Itaboraí, Niterói, Magé, Maricá, Nova Iguaçu, Paracambi, Queimados, São Gonçalo, São João do Meriti, Seropédica, Mesquita, Tanguá, Itaguaí and Japeri. This grouping of neighboring cities exposes a great deal of intrametropolitan inequality. The city of Rio de Janeiro, despite also being a very unequal city, presents much higher socioeconomic indicators than the other participating cities. Japeri, for instance, ranks at the bottom of the Brazilian equivalent of the Human Development Index (“HDI”), comparable to those cities of least developed countries in Africa. Considering that the Metropolitan Region of Rio de Janeiro exists since 1975, such great socioeconomic inequality is strong evidence of the failure of this regional governance structure in promoting integrated policies towards increasing the quality of life of its inhabitants.²⁵

²⁴ During this time, the RMRJ has been (re)created by successive laws, generally maintaining the same federative entities. The most revolutionary one – written after the decision of the Supreme Court about one of them and the Metropolitan Statute – is still just a project in the Legislative Power. That’s the Complementary Law Project n. 10/2015, presented in face of the Legislative Council of the State of Rio de Janeiro.

²⁵ “The cause of this intrametropolitan inequality seems to be the absence of what has been called the centralized and exclusive metropolitan governance structure, capable of articulating the interests and sharing the metropolitan issues of all the Federative Entities that integrate the Metropolitan Region of Rio de Janeiro (RMRJ), for which, for historical reasons, the capital, the city of Rio de Janeiro, ended up ‘isolated’” CORREIA, Arícia Fernandes. *Governança Metropolitana: desafio para a gestão pública fluminense*. **XXIII Encontro Nacional do Conselho Nacional de Pesquisa e Pós-graduação em Direito 2014**. Florianópolis: CONPEDI, 2014, with disposal in: <http://publicadireito.com.br/publicacao/ufsc/livro.php?gt=194> and access in 10 january 2015.

Figure 2: Metropolitan Region of Rio de Janeiro



Source: <http://www.mapa-brasil.com>

The extinction of the Foundation for Regional Development of Rio de Janeiro (“FUNDREM”) in 1989, a centralized metropolitan entity in charge of the planning and execution of regional public policies, left the RMRJ institutional arrangements pulverized, segmented and "thematic." The RMRJ became powerless, incapable (in theory) to coordinate the implementation of public policies of common interest. In this sense, the aforementioned decision of the Brazilian Supreme Court, according to which the state and municipalities within a metropolitan region have shared decision-making power, renewed the hopes of a more effective governance structure. This decision allowed for an inclusive and balanced decision-making process, guaranteeing a voice for municipalities and the state without undermining the constitutional legislative and executive state and municipal federalist authorities.

For many years the state of Rio de Janeiro enjoyed qualified decision power over water treatment services or whenever a municipality claimed constitutional authority to exercise such power, it could do so. Even with the creation of a metropolitan authority, there was no space for integrated and coordinated decision-making processes. In practice, the constitutional provisions on shared legislative and executive powers undermined the metropolitan legal framework calling for regional integration on matters of common interest. The aforementioned Supreme Court case shifted this scenario. The Court ruled unconstitutional the Rio de Janeiro state law (re)creating the RMRJ in the part that conferred upon the state qualified decision-making power over water treatment facilities. The ruling considered that the state law invaded the city of Rio de Janeiro’s federative autonomy. Furthermore, the opinion highlighted that municipalities were not entitled to claim their constitutional autonomy to decide alone without due care to the stakes of other metropolitan

cities and the state itself on those issues of common interest like water treatment services, the subject of the lawsuit before the Supreme Court.²⁶

After the Supreme Court decision on the matter, Congress enacted the Metropolitan Region Act (Law 13,089/2015). This statute instituted governance standards and criteria for the sharing of decision-making power among municipalities and the state. It also created the institutional framework and imposed obligations upon participating municipalities and the state to collaborate on matters of common interest. The statute called for ample public participation in the deliberation process and imposed the obligation for an integrated Regional Urban Plan. This is a powerful legal tool as it has the potential to impose a collaborative attitude upon the local policymaker.

Currently, the State of Rio de Janeiro's legislature is examined a restructuring bill that would adapt the RMRJ to the provisions set forth in the federal framework law. However, a major source of controversy in this bill lies on the heavy weight of the state and city of Rio de Janeiro in the decision-making process. By insisting on an unbalanced system of consideration over matters of regional common interest, the bill is prone to failure once again. It is crucial that local policymakers and the legislature understand the need to set aside the limitations imposed by the pseudo constitutional autonomy in matters of regional common interest to fight the great socioeconomic inequalities the RMRJ is struggling to solve since it was first instituted in 1975.

5. CONCLUSION

With the demographic explosion of the last century and the conurbation phenomenon experience by major cities, a demand for a new form of governance structure arose. A governance structure that takes into account matters traditionally considered issues of strictly local interest, such as transportation, waste management, water supply and treatment and affordable housing became concerns of common regional interest. The demand for this new form of interfederative governance system became part of national agendas, irrespective of how each nation's system of government is structured. The cases of France and Brazil highlighted in this comparative manuscript are illustrative of such a phenomenon.

The 2013 French Metropolis law reflected an ongoing practice initiated by the need for more coordinated regional policy strategies with the constitutional decentralization movement of the 20th Century. Informal collaborative initiatives within the territorial collectivities uniting different communes became formally integrated into Metropolis with the new legal paradigm. The French Metropolis of Aix-an-Marseille-Provence constitutes a

²⁶ Adin n. 1842/RJ - STF

rich case study of how the new legal framework allowed for the region to overcome great challenges relating to inequalities and economic depression.

Conversely, Brazil has a legal framework allowing for more formal structures of metropolitan regions dating back to the constitutional regime of 1967. However, due to the challenges of a constitutional framework allowing for a great degree of legislative and executive autonomy to states and municipalities, together with a high degree of socioeconomic inequality among cities facing conurbation, tackling those obstacles has been politically difficult. A Supreme Court ruling setting the grounds for a balanced collaborative decision-making metropolitan governance structure along with the 2015 new Metropolitan Region Act constitute promising legal changes in overcoming the historical barriers before a successful regional integration model.

What the lessons from the weeklong immersion in the Aix-an-Marseille-Provence Metropolis demonstrated, especially in comparison with the Metropolitan Region of Rio de Janeiro, is that the local entities' approach to urban issues is no longer effective. A new urban management framework is necessary irrespective of how each nation's system of government is structured. It arises from the demands created by the conurbation phenomenon, attracting more than half of the world's population to major cities and their suburban municipalities. Issues that, in the recent past, have been considered strictly of local interest have now become challenges of common regional concern. Recognizing this demographic phenomenon and, consequently, new urban territorial shift is crucial for an effective law and regulatory policy design that creates the proper incentives for collaborative and integrated actions within metropolitan areas.

REFERENCES:

- AUBY, Jean-Bernard *et alli*. **Droit des collectivités locales**. 5a. ed. Paris: Presses Universitaires de France, 1990.
- CHRÉTIEN, Patrice. et CHIFFLOT, Nicolas. **Droit administratif**. 13a ed. Paris : Dalloz, 2012
- CORREIA, Arícia Fernandes. FARIAS, Talden. e AIETA, Vânia. **Planejamento urbano e energias renováveis: diálogos franco-brasileiros**. Belo Horizonte: Editar, 2016.
- CORREIA, Arícia Fernandes. Governança Metropolitana: desafio para a gestão pública fluminense. **XXIII Encontro Nacional do Conselho Nacional de Pesquisa e Pós-graduação em Direito 2014**. Florianópolis: CONPEDI, 2014, with disposal in:
<<http://publicadireito.com.br/publicacao/ufsc/livro.php?gt=194>> and access in 10 january 2015.
- HAMILTON, Alexander. MADISON, James. JAY, John. **The Federalist Papers: A Collection of Essays Written in Favor of the New Constitution**
- MEIRELLES, Hely Lopes. 3ª ed. ref. e atual. **Direito Municipal Brasileiro**. São Paulo: Revista dos Tribunais, 1977.
- OBSERVATÓRIO DAS METRÓPOLES. **Novas governanças para as áreas metropolitanas o panorama internacional e as perspectivas para o caso brasileiro**. Disposal in:
http://www.observatoriodasmetropoles.ufjf.br/relatorio_Klink.pdf
- POSNER, Richard A. **Economic Analysis of Law**. Boston: Little Brown, 1973.
- SANTOS, Ângela Moulin Penalva. e VASQUES, Pedro. *Estatuto da Metrópole: avanço normativo na gestão territorial a espera de cooperação financeira*. In: AIETA, Vânia. (Org.) **Direito da Cidade**. Tomo I. Coleção UERJ 80 Anos. Rio de Janeiro: Freitas Bastos, 2015
- SASSEN, Saskia. **The Global City**. New York, London, Tokyo: Princeton University Press, 1991
- UN-HABITAT. **Estado de las Ciudades de America Latina y el Caribe 2012**. <http://www.onuhabitat.org>